

Supreme Court

No. 00-258-Appeal.
Dissent begins on page 3

In re: Sgt. Cornel Young, Jr. Grand Jury. :

ORDER

The state in this case has appealed a Superior Court order granting the petition for limited disclosure of grand jury minutes filed by the City of Providence pursuant to Rule 6(e) of the Superior Court Rules of Criminal Procedure. The Attorney General has moved to stay this order pending the state's appeal therefrom. A single justice of this Court issued a temporary stay on June 16, 2000, pending the full Court's consideration of the motion at the Court's June 22, 2000 conference.

After careful review of the Superior Court decision and the memoranda filed by counsel for the parties in respect to the stay request, we are of the opinion that there has been no demonstrated need for secrecy in respect to the grand jury proceeding in this case at this time. The targets of the grand jury have waived any claims to secrecy that they might have had. The City of Providence, the officers who were the subject of the inquiry, the estate of Cornel Young, Jr., and Leisa Young, individually, likely litigants in a prospective judicial proceeding, and their counsel, have demonstrated a particularized need to examine the records of the grand jury proceeding.

Our dissenting colleagues suggest that a stay should be granted in order that we might receive the benefits of legal briefs and oral argument on this important issue. It should be noted that the Court has had the benefit of extensive memoranda from the state and from all of the interested parties in this

case, including the city of Providence and the estate of Cornel Young. The state and all other parties to this prospective litigation submitted briefs to the Presiding Justice of the Superior Court prior to his issuance of a decision granting limited release of the grand jury minutes. The decision of the Presiding Justice reflected the extensive research given to this matter by him and by the parties. It must be remembered that the grand jury is an arm of the Superior Court. It is not under the control of the Attorney General. The Presiding Justice has analyzed this controversy with great care. His decision is attached to this order and made a part hereof. A majority of this Court considers his decision to be very persuasive. It does not abrogate Rule 6(e) of the Superior Court Rules of Criminal Procedure. It simply interprets that rule realistically in light of the circumstances and facts of this case.

Moreover, the Presiding Justice of the Superior Court, in a carefully crafted and comprehensive order, imposed stringent conditions on the release of the grand jury tapes. Specifically, the use of the materials so released is restricted to discovery and trial purposes related to the claim of the estate and may not otherwise be disseminated, published, or released under penalty of contempt. In addition, the Attorney General may petition the court for “an order of nondisclosure of the testimony, or any portion thereof, of any witness presented to the grand jury” on other grounds. For example, if any witness should seek protection from disclosure of his or her testimony before the grand jury, an application may be made to the Presiding Justice for a protective order.

For the reasons stated, the state’s request for a stay is denied and the stay heretofore

entered is hereby dissolved.

Entered as an Order of Court this 26th day of June 2000.

By Order,

Clerk

Flanders, Justice, with whom Justice Bourcier joins, dissenting. I respectfully dissent. I would grant the motion for a stay because, in my judgment, this appeal raises serious and substantial issues concerning the confidentiality of grand-jury proceedings and how Rule 6(e) of the Superior Court Rules of Criminal Procedure, which addresses this subject, should be interpreted in a situation like this one where no criminal indictment has been returned but a civil-damages action is looming. Denying the motion for a stay means that disclosure of the grand-jury transcripts and other materials, as ordered by the Superior Court, will be a fait accompli before we can reach the merits of the parties' arguments concerning why such disclosure is or is not appropriate in this case. Thus, denying the motion for a stay effectively moots this appeal. Because this Court has never had occasion previously to interpret the rule of grand-jury secrecy in this context -- and what, if any, exceptions thereto should be permitted -- I believe the Court should have granted the requested stay and prevented the immediate release of these records, thereby enabling us to rule on the merits of this case in the context of a live controversy.

The purpose of grand-jury secrecy is to protect not just the targets of a grand-jury investigation, but also witnesses, grand jurors, and others who participate in or who provide evidence to the grand

jury. See, e.g., In re Special Grand Jury Investigation Concerning Organic Technologies, 703 N.E. 2d 790, 793 (Ohio 1999) (noting that “[t]he secrecy of grand jury proceedings continues even after the grand jury investigation is concluded in order to protect witnesses from retaliation”). See also In the Matter of District Attorney of Suffolk County, 448 N.E. 2d 440, 443 (N.Y. 1983) (noting that “the rule of secrecy applies equally to either one who gives evidence or to one concerning whom evidence is given”). Thus, the mere fact that the targets of the grand-jury investigation have waived any claim to secrecy that they might have fails to take into account the witnesses and other individuals, let alone the grand jurors themselves, who rely on grand-jury secrecy when they participate in this process, when they are subpoenaed to provide evidence to the grand jury, or when they are named in the testimony or documents that the grand jury considers.

Moreover, I do not believe that the mere filing of a civil claim for damages with a city or town should serve as the legal equivalent of an “open sesame” to confidential grand-jury records. See id. at 444 (rejecting Attorney General’s request to use Grand Jury proceedings in a civil proceeding by the county because of a failure to show “a compelling and particularized need”). Because these materials are privileged, they are not subject to discovery in a civil case. See Rule 26(b)(1) of the Superior Court Rules of Civil Procedure (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matters involved in the pending action”). (Emphasis added). By denying this motion to stay, the Court has blown off the doors to grand-jury secrecy without so much as a passing nod to a long and venerable tradition of respecting the confidentiality of the grand-jury process, much less to any showing of particularized need on the part of the municipality seeking this disclosure. Given the intense media coverage and interest in this proceeding and the number of persons who will now have access to the grand-jury materials released by the Superior Court’s order, any notion that these

materials will not be further disseminated, published, or released in connection with a yet-to-be-filed civil case facing years of pretrial discovery and motion practice represents wishful thinking at best. Hence, I would grant the stay and thereby preserve the status quo while giving the parties a chance to submit legal briefs on this important issue, so that we can consider and decide this question on some reasoned basis, instead of effectively killing this appeal without benefit of any legal briefing, any oral argument, or any other assistance to speak of save our own off-the-cuff reaction to this motion.